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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,281	07/18/2003	Patrick L. Watson	EKIN:1001	2401
34725	7590	09/22/2005	EXAMINER	
CHALKER FLORES, LLP 12700 PARK CENTRAL, STE. 455 DALLAS, TX 75251			CHAU, MINH H	
			ART UNIT	PAPER NUMBER
			2854	
DATE MAILED: 09/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

<b>Office Action Summary</b>	<b>Application No.</b> 10/623,281	<b>Applicant(s)</b> WATSON ET AL.	
	<b>Examiner</b> Minh H. Chau	<b>Art Unit</b> 2854	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 1-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>July 01, 2005</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of **Group IV, claims 37-44** in the reply filed on July 06, 2005 is acknowledged. The traversal is on the ground(s) that a thorough search of the subject matter of Claims 37-44 as well as Claims 1-36 would necessarily include all art classifications 523, 430, 252 and 424 cited by the Examiner, and such, examination of claims 1-36 on the merit would impose no additional burden on the Patent Office. This is not found persuasive because first, the subject matter of **Group I, claims 1-18** is directly to a gel; **Group II, claims 19-27** is directly of a scented article and **Group III, claims 28-36** is directly to a method for preparing a gel carrier, while the subject matter of **Group IV, claims 37-44** is directly to a method of applying a scent to an article which do not required the specific features or method steps of **Groups I – III** in order to operate and second the search for **Group IV, claims 37-44** do not necessarily to include all the art classifications 523, 430, 252 and 424. Therefore, the search and examination of the entire application is a serious burden upon the Examiner. The requirement is still deemed proper and is therefore made FINAL.

### *Claim Objections*

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next

following the highest numbered claims previously presented (whether entered or not).  
The claims set comprising **two claims 19 and no claim 29**. Misnumbered **claims 19-44** have been renumbered as **20-44**.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 37-44** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Malloy et al.** (US # 5,577,947) in view of **Schilli et al.** (US # 5,552,869).

With respect to **claim 37**, **Malloy et al.** teach a method of applied a scent to an article, comprise the steps of applying a scented ink or scented gel carrier to a substrate and drying or curing the scented ink or scented gel carrier (col. 4 of Malloy et al.)

**Malloy et al.** teach all the limitations; except for the curing the scented gel at a temperature is at about or less than the flashpoint of the scent.

**Schilli et al.** teach a method for drying liquid or ink at a temperature below or less than the flashpoint of the liquid or ink (cols. 2-3 of Schilli et al.)

In view of this teaching, it would have been obvious to one of skill in the art to modify the method steps of **Malloy et al.** to include the step of drying liquid or ink at a temperature below or less than the flashpoint of the liquid or ink at taught by **Schilli et**

**a1.** to assure the curing process of the scented ink or scented gel applied on the substrate can be carry out properly.

With respect to **claim 38**, see col. 4, lines 10-18 of **Malloy et al.** that teach the step of applying a protective coating to the substrate.

With respect to **claim 39**, see col. 5 of **Malloy et al.** that teach the step of applying a protective coating to the scented ink or scented gel carrier.

With respect to **claim 40**, see col. 5, lines 34-36 of **Malloy et al.** that teach the scented ink or scented gel carrier is applied to the substrate by spraying.

With respect to **claim 41**, see col. 3 of **Malloy et al.** that teach fragment oil of the scent is added and mixed with the ink and then applied to the substrate, the scent is not generally visible during the use of the article.

With respect to **claim 42**, see col. 3 of **Malloy et al.** that teach fragment oil of the scent is colorless.

With respect to **claim 43**, see col. 4 of **Malloy et al.** that teach the scented ink or scented gel is applied to substrate by screen printing.

With respect to **claim 44**, see Fig. 1 of **Malloy et al.** that teach the steps of an article manufacture.

### ***Response to Arguments***

**5.** Applicant's arguments with respect to **claims 37-44** have been considered but are moot in view of the new ground(s) of rejection.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh H. Chau whose telephone number is (571) 272-2156. The examiner can normally be reached on M - TH 9:30AM - 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew H. Hirshfeld can be reached on (571) 272-2168. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MHC  
September 17, 2005

  
**MINH CHAU**  
**PRIMARY EXAMINER**